))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 192 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AIR CONTROL & CHEMICAL ENGG CO

Appearance:

MR BB NAIK for MR RP BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following questions have been referred to this Court for its opinion under the provisions of sec. 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in entertaining Misc. Application No. 119/Ahd/82 which in fact amounted to re-hearing of I.T.A. No. 832/Ahd/80 disposed of by its order dated 29.2.1981?

2 Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the grounds of appeal filed by the assessee in ITA No. 832/Ahd/80 were wide enough to cover whether the CIT(A) was right in confirming the exercise of powers u/s 154 of the I.T. Act, 1961 by the ITO?"

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in exercising the powers, while disposing of misc. Application No. 119/Ahd/82 in such a manner that I.T.A. No. 832/Ahd/80 which was disposed of on 29.7.81 by partly allowed should be set aside and the appeal should be allowed in full?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the exercise of powers u/s 154 of the I.T. Act, 1961 by the I.T.O. was not legal and valid?

2. We have heard learned advocate Shri BB Naik appearing for the revenue. Though served, nobody has appeared for the respondent assessee.

3. After hearing the learned advocate and looking to the statement of case submitted by the Tribunal, in our opinion, it would not be possible for us to render our opinion on the questions which have been referred to this Court for the reason that the order of the ITO, which was subject-matter of the appeal before the CIT and which was ultimately set aside by the Tribunal, is not on record. As the order, which was passed in exercise of powers under sec. 154 of the Act, is not on record, it would be

difficult for this Court to answer whether the powers under the provisions of sec. 154 of the Act were rightly exercised by the Assessing Officer.

5. In view of the fact that sufficient material is not with this Court for answering the questions, we are returning the reference unanswered and we direct the Tribunal to prepare a fresh statement of case along with all relevant orders and material which might be required to be relied upon by the revenue as well as the assessee so as to have the opinion of this Court.

The Reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)